ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-310

February 20, 2008

ERIC SUMMONS
APPELLANT

AN APPEAL FROM PULASKI COUNTY CIRCUIT COURT
[CR2006-1055]

V.

HON. JOHN LANGSTON, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Eric Summons appeals from his conviction for the first-degree murder of Charles Washington. Appellant argues that the trial court erred in denying his motion for a directed verdict because the State failed to prove that he purposefully caused Washington's death. Appellant also asserts that the trial court erred in issuing a voluntary-intoxication instruction because he did not claim intoxication as a defense. We hold that the trial court did not err in either respect. Therefore, affirm appellant's conviction.

I. Facts

Washington was killed in the early morning hours of January 15, 2007, by a close-contact gunshot wound to the back of his head. Appellant, Washington, and three friends, Derrick Ferguson, Shaun Hollis, and Chris Murray, spent the previous evening riding around Little Rock, taking drugs. Hollis, Murray, and the investigating officers testified at the jury

trial, concerning the following events.[1]

Appellant, Ferguson, and Hollis got together at approximately 4:00 p.m. on January 14, 2007. Hollis drove the vehicle, a Toyota pickup truck; Washington and Murray joined them later in the evening. Ferguson, Murray, and appellant were seated in the back seat; appellant was seated directly behind Washington and Murray was seated beside appellant. According to both witnesses, everyone in the vehicle was using drugs throughout the evening, including cocaine, marijuana, PCP, and "sherm" (embalming fluid that is soaked into a cigarette and smoked).

Hollis said that Ferguson had a .22 or .25 caliber handgun and that appellant had a .357 magnum handgun, which each was "showing off" in the back seat. Sometime in the early morning hours of January 15, while the men were still driving around in the truck, Washington was shot in the back of the head. Washington immediately slumped in his seat. Murray testified that when the shot was fired, appellant was holding the gun pointed "by" Washington's seat. There was no argument or known "bad blood" between appellant and Washington, and appellant did not say anything to Washington before he was shot. Neither Hollis nor Murray believed that appellant intentionally shot Washington.

After the shot was fired, at the urging of the other men, Hollis drove to Reck Road, where appellant, Ferguson, and Murray dumped Washington's body alongside the road. Murray then took the truck and abandoned it on Hilaro Springs Road, after first attempting to burn it. The vehicle was spotted by a witness at approximately 7:00 a.m. that morning. Washington's body was found on Reck Road; brain matter and blood was found in the front passenger seat when the vehicle was recovered on Hilaro Springs Road.

Meanwhile, appellant, Hollis, and Ferguson arrived at Hollis's home at approximately

[1]Ferguson died before this case was brought to trial.

5:00 a.m. on January 15, where appellant and Ferguson were picked up by some female friends. Hollis testified that approximately two hours after the men separated, appellant returned to his house, said that he "just wigged out" and also said that "I don't know why I did that" and "I don't know what I did." Hollis also said that he saw appellant later, during a court proceeding, during which they were seated side-by-side, and that appellant said, "Fam," which Hollis interpreted as a request for him to "be quiet" or "hold it down."

According to Frank Peretti, the forensic examiner who performed the autopsy, the bullet entered the back, right side of Washington's head from approximately five to eight inches away. Peretti explained that the bullet went from the right back to the front left of Washington's skull and came to rest in his left cheekbone, and that there is no chance of survival with such a wound. Peretti concluded that the range of fire and the path of the bullet were consistent with Washington being shot from the rear, passenger side of the vehicle.

The bullet that Peretti removed from Washington's body was admitted into evidence; Peretti described it as a medium-caliber jacket bullet. He said the bullet was inconsistent with a .357 caliber bullet, which is a large-caliber bullet, and was also inconsistent with a .22 caliber bullet, which is not jacketed. Peretti admitted that he was not a weapons expert. No gun was recovered to test against the bullet that was taken from Washington's body.

At the close of the State's case, appellant moved for a directed verdict, arguing that the State failed to prove that he purposely caused Washington's death. The trial court denied the motion, and again denied the renewal of that motion after appellant presented no evidence on his behalf. Additionally, the trial court issued a voluntary-intoxication instruction over appellant's objection.

The jury found appellant guilty and sentenced him to serve twenty-five years in the Arkansas Department of Correction.

II. Sufficiency of the Evidence

Appellant first argues that the trial court erred in denying his motion for a directed verdict because the State failed to prove that he possessed "a purposeful intent to kill." We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and consider only the evidence that supports the jury's verdict. *See Coggin v. State,* 356 Ark. 424, 156 S.W.3d 712 (2004). We affirm a conviction if substantial evidence exists to support it. *Id*. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id*.

A person commits first-degree murder if he, with a purpose of causing the death of another person, causes the death of another person. *See* Ark. Code Ann. § 5-10-102(a)(2) (Repl. 2006). A person acts purposely with respect to his conduct when it is the person's conscious object to engage in conduct of that nature or to cause the result. *See* Ark. Code Ann. § 5-2-202(1) (Repl. 2006). A criminal defendant's intent can seldom be proven by direct evidence and must usually be inferred from circumstances surrounding the crime; the jury is allowed to draw upon its common knowledge and experience to infer intent from the circumstances. *See Whisenant v. State*, 85 Ark. App. 111, 146 S.W.3d 359 (2004). In particular, a jury may infer the necessary intent for first-degree murder from the type of weapon used, the manner of its use, and the nature, location, and extent of the wound. *See Leaks v. State*, 345 Ark. 182, 45 S.W.3d 363 (2001). It is presumed that a person intends the natural and probable consequences of his acts. *See Turbyfill v. State*, 92 Ark. App. 145, 211 S.W.3d 557 (2005).

We affirm the trial court's denial of appellant's motion for a directed verdict because substantial evidence supports that he purposefully killed Washington. The evidence, viewed

in the light most favorable to the jury's verdict, is that appellant shot Washington in the back of his head from five-to-eight inches behind the victim. Murray, who was seated beside appellant in the back seat, said that when the gun was fired, appellant was pointing "by" Washington's seat. The bullet path was consistent with Washington being shot from behind in the passenger seat, and the type of wound was one that left Washington no chance of survival.

Despite appellant's implied argument to the contrary, the jury was not required to believe that the gun accidentally discharged while appellant and Ferguson were showing the guns to each other. Shortly after the incident, appellant told Hollis that he "just wigged out" and "I don't know why I did that." The jury could have certainly inferred appellant's statements as evidence of his guilt. Additionally, appellant assisted in dumping Washington's body, did not report the crime to the police, and encouraged Hollis to remain quiet about the incident. The jury could have inferred appellant's attempts to conceal the crime as evidence of his guilt. *See Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003). Accordingly, we affirm the trial court's denial of appellant's motion for a directed verdict.

III. Voluntary-Intoxication Instruction

The remaining issue is whether the trial court erred in issuing a voluntary-intoxication instruction when appellant did not raise the defense of intoxication. We hold that the trial court properly issued the instruction.

Generally, a party is entitled to a jury instruction when it is a correct statement of the law and when there is some basis in the evidence to support giving the instruction. *See Barnes v. Everett*, 351 Ark. 479, 95 S.W.3d 740 (2003). We will not reverse a trial court's decision to give an instruction unless the court abused its discretion. *Id.*

Here, the State filed a pretrial motion to submit a voluntary-intoxication instruction.

The instruction that was issued stated, "Voluntary intoxication is not a defense to any criminal offense in Arkansas. Intoxication is a disturbance of a person's mental or physical capacities as a result of taking alcohol or drugs or other substance into his body." Although appellant does not challenge the substance of the instruction, we first note that this is a correct statement of the law. *See Standridge v. State*, 329 Ark. 473, 951 S.W.2d 299 (1997); *White v. State,* 290 Ark. 130, 717 S.W.2d 784 (1986); Ark. Code Ann. § 5-2-207 (Repl. 2006).

Appellant contends that the trial court should not have issued the instruction because no witness testified that he was intoxicated and because he raised no intoxication defense.[2] We disagree. First, there was ample evidence that appellant was intoxicated. Hollis and Murray testified that all of the men in the truck were using drugs. Hollis specifically testified that they were getting "throwed" and "messed up" on cocaine, PCP, and sherm. Murray testified that "[w]e basically was all doing the same thing," and further stated that appellant was "smoking weed" and using sherm. On these facts, there was ample evidence established that appellant was using drugs and was intoxicated.

Second, a voluntary-intoxication instruction may be issued even if the defendant does not raise the defense of intoxication where such an instruction will help avoid jury confusion. *See Standridge*, *supra*; *Gilkey v. State*, 41 Ark. App. 100, 848 S.W.2d 439 (1993). The rationale for issuing the voluntary-intoxication instruction is that a defendant *cannot* raise the defense of involuntary intoxication. Hence, despite appellant's argument to the contrary, it is irrelevant whether the evidence of intoxication is submitted by the State or by the defendant.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.

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[2]He also argued that to issue the instruction would shift the burden of proof to him to show he was not intoxicated. However, he has abandoned this argument on appeal.